Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Text

CONFIDENTIAL

PAGE 01 PARIS 01740 01 OF 02 191240Z
ACTION EUR-12

INFO OCT-01 NEA-10 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00
CIAE-00 DODE-00 PM-04 H-01 INR-07 L-03 NSAE-00 NSC-05
PA-01 PRS-01 SP-02 SS-15 SY-05 FBIE-00 SCA-01 USSS-00
MCT-01 IO-13 SSM-03 EURE-00 /085 W
----------191304Z 095681 /43
O R 191237Z JAN 77
FM AMEMBASSY PARIS
TO SECSTATE WASHDC IMMEDIATE 8873
INFO AMEMBASSY BONN IMMEDIATE
AMEMBASSY TEL AVIV IMMEDIATE
AMEMBASSY BERLIN
AMEMBASSY BRUSSELS
AMEMBASSY DUBLIN
AMEMBASSY LONDON
AMEMBASSY LUXEMBOURG
AMEMBASSY THE HAGUE
USMISSION NATO
USMISSION USBERLIN
AMCONSUL MUNICH

C O N F I D E N T I A L SECTION 01 OF 02 PARIS 01740

E.O. 11652: GDS
TAGS: PFOR PINS PORS FR IS GW
SUBJECT: GERMAN-FRENCH DIVERGENCE ON ABOU DAOUD
EXTRADITION REQUEST

REF: (A) BONN 652; (B) BONN 830; (C) PARIS 946;
(D) PARIS 1087; (E) PARIS 1110

1. EMBASSY NOTES FROM WIRE SERVICE REPORTS THAT AMERICAN SENATE HAS DECIDED TO POSTPONE CONSIDERATION OF ABOUD DAOUD RESOLUTION PENDING FURTHER CLARIFICATION FROM GOF AND STATE DEPARTMENT. WE ALSO NOTE CLEAR DISCREPANCY IN EXPLANATIONS ABOUT LEGAL ASPECTS OF ABOU
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 PARIS 01740 01 OF 02 191240Z

DAOUD'S RELEASE BETWEEN GOF AND FRG. PRESIDENT GISCARD D'ESTAING'S FORCEFUL DEFENSE OF GOF LEGAL PROCEDURES IN JANUARY 17 PRESS CONFERENCE ALSO ASSIGNED HEAVY RESPONSIBILITY TO FRG. IN VIEW OF FOREGOING, EMBASSY WISHES TO REVIEW THE LEGAL ASPECTS OF THE CASE AND COMMENT ON THE POSSIBLE RAMIFICATIONS OF THE PROPOSED SENATE RESOLUTION.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

2. WE NOTE FROM PARAGRAPH 1-E REFTEL A THAT FRENCH ARE BOUND BY FRANCO-GERMAN EXTRADITION TREATY OF NOVEMBER 1951 TO RETAIN A SUSPECT FOR 20 DAYS FOLLOWING CUSTODY OF PERSON SOUGHT ON BASIS OF PROVISIONAL ARREST REQUEST. THIS PROVISION IS IN ARTICLE 10 OF THE TREATY.

3. THE FRENCH COURT ORDERED ABOU DAOUD'S RELEASE ON THE BASIS OF ARTICLE 9, PARAGRAPH 3 OF THE SAME TREATY, WHICH STATES THAT A REQUEST FOR PROVISIONAL ARREST PENDING THE SUBMISSION OF A FORMAL EXTRADITION REQUEST MUST BE CONFIRMED BY DIPLOMATIC CHANNELS. THE ARTICLE DOES NOT SPECIFY A TIME DELAY FOR DIPLOMATIC CONFIRMATION; ON THE OTHER HAND THIS REQUIREMENT OF THE TREATY DOES NOT APPEAR TO BE RELATED TO THE 20-DAY TIMEFRAME BETWEEN ARREST AND SUBMISSION OF THE FORMAL EXTRADITION REQUEST.

4. THE GOF ARGUMENT IS THAT THEY INFORMED THE FRG OF THE REQUIREMENT OF ARTICLE 9; THAT THEY INDICATED FRG FULFILLMENT OF THIS REQUIREMENT HAD TO BE ACCOMPLISHED QUICKLY; AND THAT THE FRG HAD SUFFICIENT TIME TO FORWARD THE NECESSARY DIPLOMATIC CONFIRMATION VIA THE FRG EMBASSY IN PARIS. THE FRG EXPLANATION IN PARAGRAPH 1-F OF BONN 652 DOES NOT FULLY REPLY TO THE FRENCH CLAIM. THE FRG SAYS THAT AT NO TIME PRIOR TO ABOU DAOUD'S RELEASE DID THE FRENCH PRESSURE THE GERMANS TO SUBMIT AN EXTRADITION REQUEST. THE GOF SAYS THAT FOR AT LEAST CONFIDENTIAL

CONFIDENTIAL

PAGE 03 PARIS 01740 01 OF 02 191240Z

24 HOURS PRIOR TO THE RELEASE, THEY PRESSURED THE FRG TO FULFILL ARTICLE 9 WHICH DOES NOT REQUIRE AN EXTRADITION REQUEST, BUT SIMPLY A CONFIRMATION BY DIPLOMATIC MEANS OF THE PROVISIONAL ARREST REQUEST. IN HIS PRESS CONFERENCE JANUARY 17, GISCARD GAVE A DETAILED ACCOUNT OF THIS ELEMENT. HE SAID THAT THE FOREIGN MINISTER'S DIRECTOR OF CABINET MAURICE ULRICH CALLED IN THE FRG CHARGE, STATED THE REQUIREMENT OF ARTICLE 9, REQUESTED A STATEMENT OF FRG INTENTIONS, AND SAID HE WAS AVAILABLE TO RECEIVE A COMMUNICATION ANY TIME OF THE DAY OR NIGHT. GISCARD CLAIMS THAT A COMMUNICATION NEVER CAME.

5. IN ANALYZING THE CONFLICTING CLAIMS AND DIVERGENT EXPLANATIONS, WE CAN ASK THE FOLLOWING QUESTIONS:

A. WAS IT NECESSARY FOR THE GOF TO BRING ABOU DAOUD BEFORE A FRENCH COURT WHERE THE NON-IMPLEMENTATION OF ARTICLE 9 WOULD INEVITABLY BE NOTED? THE FRG AND FRENCH CRITICS OF THE ACTION SAY THAT THERE WAS NO

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

REQUIREMENT FOR THE GOF TO REQUEST A COURT HEARIRG. THE GOF COULD HAVE SERENELY WAITED THE 20 DAYS REQUIRED BY ARTICLE 10. ON THE OTHER HAND, OBSERVERS MUST TAKE NOTE OF THE FACT THAT ABOU DAOUD HAD FIVE OF THE BEST AND MOST HIGHLY PAID LAWYERS IN FRANCE DEFENDING HIM,

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 PARIS 01740 02 OF 02 191238Z
ACTION EUR-12

INFO OCT-01 NEA-10 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00
CIAE-00 DODE-00 PM-04 H-01 INR-07 L-03 NSAE-00 NSC-05
PA-01 PRS-01 SP-02 SS-15 SY-05 FBIE-00 SCA-01 USSS-00
MCT-01 IO-13 SSM-03 EURE-00 /085 W
----------191304Z 095585 /43
O R 191237Z JAN 77
FM AMEMBASSY PARIS
TO SECSTATE WASHDC IMMEDIATE 8874
INFO AMEMBASSY BONN IMMEDIATE
AMEMBASSY TEL AVIV IMMEDIATE
AMEMBASSY BERLIN
AMEMBASSY BRUSSELS
AMEMBASSY DUBLIN
AMEMBASSY LONDON
AMEMBASSY LUXEMBOURG
AMEMBASSY THE HAGUE
USMISSION NATO
USMISSION USBERLIN
AMCONSUL MUNICH

C O N F I D E N T I A L SECTION 02 OF 02 PARIS 01740

LED BY ROLAND DUMAS, WHO REPRESENTED PICASSO AND FRANCOIS MITTERRAND. IT IS HIGHLY UNLIKELY THAT THIS TEAM OF CRACK LAWYERS WOULD HAVE FAILED TO NOTICE THE NON-FULFILLMENT OF ARTICLE 9. BUT AGAIN, WHAT WAS THE LEGAL REQUIREMENT FOR HURRY?

B . WAS THERE ANYTHING PREVENTING THE FRG FROM SUBMITTING THE DIPLOMATIC CONFIRMATION? IF WE CAN BELIEVE THE FRENCH CLAIM THAT THE FRG WAS INFORMED THAT

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

ARTICLE 9 HAD TO BE FULFILLED QUICKLY, AND EMBASSY
BELIEVES IT ON BASIS OF RELIABLE SOURCE REPORTED IN
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 PARIS 01740 02 OF 02 191238Z

REFTEL (C), WE SEE NO REASON WHY FRG WAS UNABLE TO
SUBMIT A DIPLOMATIC NOTE WITHIN HOURS OF NOTIFICATION.
WE NOTE FROM PARAGRAPH 2-C OF REFTEL (A), HOWEVER, THAT
FRG BELIEVED ITS VARIOUS CONTACTS WITH GOF HAD IN EFFECT
MADE IT CLEAR THAT ARREST REQUEST WAS FULLY OFFICIAL,
AND BY IMPLICATION THAT ARTICLE 9 HAD BEEN FULFILLED.
PRESUMABLY IT CAN BE ARGUED THAT CONFIRMATION BY DIPLO-
MATIC CHANNELS DOES NOT NECESSARILY REQUIRE SOMETHING
IN WRITING. NEVERTHELESS, IF THERE WERE ANY AMBIGUITY,
THE FRG COULD EASILY HAVE CLEARED IT UP WITH A SIMPLE
DIPLOMATIC NOTE, ASSUMING THEY WERE INFORMED OF THE
REQUIREMENT IN ADVANCE OF DAOUD'S RELEASE.

C. IF THE LEGAL TECHNICALITIES HAD BEEN TAKEN
CARE OF BY BOTH THE GOF AND FRG, WHAT WOULD HAVE HAP-
PENED? THE FRG WOULD PRESUMABLY HAVE TRANSMITTED THE
FORMAL EXTRADITION REQUEST FROM MUNICH WITHIN 20 DAYS.
ABOU DAOUD WOULD HAVE REMAINED IN CUSTODY FROM SIX WEEKS
TO TWO MONTHS AWAITING COURT DELIBERATIONS ON THE RE-
QUEST. THE COURT WOULD THEN HAVE RELEASED ABOU DAOUD
BECAUSE EXTRADITION IS NOT ALLOWED FOR OFFENSES THAT
ARE MOTIVATED BY POLITICAL OBJECTIVES.

6. COMMENT AND CONCLUSIONS--WHO IS RIGHT, THE FRG OR
THE GOF? THE FULL ANSWER TO THIS QUESTION LIES IN THE
AREA OF INTENTIONS ON THE PART OF THE HIGHEST LEVELS OF
GOVERNMENT. BUT TO THIS EMBASSY IT LOOKS AS IF BOTH
GOVERNMENTS COULD EASILY HAVE TAKEN CARE OF THE TECHNI-
CAL DETAILS. DESPITE ABOU DAOUD'S CRACK LAWYERS, THE
GOF COULD HAVE DELAYED A COURT HEARING FOR AT LEAST
20 DAYS. THE RUSH TO BRING DAOUD BEFORE THE COURT WAS
EXTRAORDINARY. THE FRG ON THE OTHER HAND COULD EASILY
HAVE TAKEN CARE OF ARTICLE 9 THROUGH A SIMPLE DIPLOMATIC
NOTE. IN SHORT, THE GOF'S RAPID INVOKING OF ARTICLE 9
WAS NOT NECESSARY, AND THE FRG'S FAILURE TO FULFILL
ARTICLE 9 WAS NOT NECESSARY. BOTH GOVERNMENTS MUST
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 PARIS 01740 02 OF 02 191238Z

SHARE FULL RESPONSIBILITY FOR ABOU DAOUD'S RELEASE
BASED PRESUMABLY ON THEIR RESPECTIVE FOREIGN POLICY
IMPERATIVES.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

7. ON THE QUESTION OF THE SENATE RESOLUTION, EMBASSY BELIEVES SENATE WOULD WANT TO TAKE INTO CONSIDERATION TONE OF GISCARD'S PRESS CONFERENCE, WHICH WAS HIGHLY NATIONALISTIC, A PUBLIC POSTURE THAT IS MOST UNUSUAL FOR HIM. IN VIEW OF THE EXTENSIVE INTERNAL CRITICISM OF THE GOF'S HANDLING OF THE CASE, GISCARD INVOKED A TIME-PROVEN TACTIC TO DIVERT PUBLIC WRATH AWAY FROM INEPT HANDLING TO FOREIGN INTERFERENCE. THE GOF'S IMAGE HAS BEEN CONSIDERABLY TARNISHED BY THIS AFFAIR BOTH AT HOME AND ABROAD. EMBASSY FEELS THAT A SENATE RESOLUTION WHICH SINGLES OUT FRANCE WOULD REINFORCE THE INTERNAL NATIONALISTIC REACTIONS AT THIS POINT RATHER THAN THE FEELINGS OF SHAME. IN SHORT, A POINT OF DIMINISHING RETURNS HAS BEEN REACHED ON EXTERNAL PUNISHMENT OF THE FRENCH FIASCO. IT MIGHT BE MORE EFFECTIVE FOR THE SENATE TO MODIFY ITS RESOLUTION TO AVOID MENTIONING ANY COUNTRIES, BUT MERELY EXPRESSING GREAT DISPLEASURE AT THE FACT ABOU DAOUD GOT AWAY.
RUSH

CONFIDENTIAL

NNN

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, GOVERNMENT REACTIONS, PRISONERS RELEASE
Control Number: n/a
Copy: SINGLE
Sent Date: 19-Jan-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977PARIS01740
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D770019-1180
Format: TEL
From: PARIS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770137/aaaabgdd.tel
Line Count: 243
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: a6e4a2d4-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 77 BONN 652, 77 BONN 830, 77 PARIS 946, 77 PARIS 1087, 77 PARIS 1110
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 03-Dec-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3558719
Secure: OPEN
Status: NATIVE
Subject: GERMAN-FRENCH DIVERGENCE ON ABOU DAOUD EXTRADITION REQUEST
TAGS: PFOR, PINS, PORS, FR, IS, GE, US, (DAOUD, ABOUD)
To: STATE
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/a6e4a2d4-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009